

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

Writ Petition No.20182 of 2008

27-01-2009

Divakar S.Natarajan.

**State Information Commissioner, A.P.State Information
Commission, Hyderabad and
others.**

Counsel for petitioner: Party-in-person

Counsel for Respondents : Government Pleader for GAD

:JUDGMENT:

Transparent functioning of the agencies of a State would go a very long way in providing not only peace and tranquility to its citizens, but also would enable them to lead respectable and meaningful life. Many a time, the citizens feel aggrieved, on account of their not being able to have access to the information, in relation to the matters of their immediate concern. More and more the information is withheld, a citizen would tend to gain an impression,

that he is denied what is legitimately due to him, in an arbitrary and capricious manner.

2. Howsoever desirable it may be, to ensure complete openness in state activity, by its very nature, governance requires certain amount of confidentiality, at least in some of its facets. A decent balance needs to be maintained between the two conflicting phenomena. An enlightened citizenry and a responsible Government, with their collective effort, can certainly bring about an ideal situation. It is a continuous process and one cannot expect instant and immediate results. The Domestic Laws and International Conventions emphasize upon the freedom of an individual to hold an opinion for himself, and at the same time, espouse his right to seek furnishing information on any aspect, of his choice.

For instance, Article 19 of the Universal Declaration of Human Rights, 1948, reads as under:

"Article-19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

3. The provisions of various domestic enactments and international conventions are almost similar, with semantic changes and with slight difference as to emphasis. Difficulty in enacting provisions, that can maintain

equilibrium between these two conflicting ideas, has been felt, and it is too early to say that any perfection, in this regard, has been achieved.

4. The Parliament enacted the Freedom of Information Act in the year 2002. This was repealed by the Right to Information Act, 2005 (for short 'the Act'). The Act confers upon the citizens, the right to information, subject to other provisions thereof. Section 4 creates an obligation on every public authority to maintain various records and information mentioned therein. Section 5 places every public authority under obligation to designate a Public Information Officer (PIO). Section 6, which is very important in the entire scheme of the Act, stipulates the procedure for submission of application to seek information and Section 7 deals with the manner in which disposal is to be given to the applications. The nature of information that can be withheld when requested for, is itemized in Section 8. Remedy of appeal is provided for under Section 19 of the Act.

5. The petitioner had produced a documentary in Urdu with title "Hyderabad, August 1948" depicting the life of one Mr. Shoebullah Khan, particularly the circumstances, leading to his martyrdom.

It appears that, the film was appreciated by many and proposal was mooted to confer the status or title of "film maker of acknowledged eminence" upon him. It is stated that eminent personalities, Ex-Chief Minister, Ex-Union Home Minister and some prominent persons, who are holding positions at present, have recommended the conferment of such status on the petitioner. However, that did

not take final shape.

6. The petitioner states that he had sent e-mails to the Chief Secretary, Government of A.P., the second respondent herein, on 25th, 26th, 29th and 31st July 2005 and 3rd August 2005, in relation to the subject matter. Complaining that he did not receive any response to the e-mails, the petitioner submitted an application to the concerned PIO, the third respondent herein. Correspondence ensued in this regard and the third respondent wanted the petitioner to be specific about the information required by him. The petitioner filed an appeal on 18.07.2007 before the appellate authority under the Act. Through this, he wanted the information to be given on ten items. A reply was given on 02.11.2007 complying with the information on point No.3 of the appeal and observing that rest of the items do not come under the definition of information. The petitioner approached the State Information Commissioner, the first respondent herein, by way of appeal. The appeal was dismissed through order, dated 09.01.2007.

7. The petitioner made further representations on several dates to the third respondent with a request to furnish the information. Through a letter, dated 04.12.2007, the third respondent informed the petitioner that the available information has already been furnished to the petitioner and that no further correspondence would be entertained in this regard. The petitioner feels aggrieved by these proceedings.

8. On behalf of respondents, a detailed counter-affidavit is filed. It is

stated that in spite of repeated requests, the petitioner did not divulge the particulars of information sought for by him and that a perusal of the correspondence at the subsequent stage discloses that what is prayed for by the petitioner cannot be treated as information.

9. The petitioner appeared and argued in person. He contends that the stand taken by the respondents on the applications or appeal submitted by him is contrary to the provisions of the Act and the Rules made thereunder. He submits that the application made by him was self-explanatory, and there was absolutely no justification for the respondents, in insisting that the petitioner shall furnish the copies of e-mails and to specify the nature of information. According to him, a person, who makes an application under Section 6 of the Act, cannot be required to be specific, much less to disclose the purpose for which he needs the information. He has elaborated the grounds pleaded by him in the affidavit.

10. Learned Government Pleader for General Administration Department submits that unless and until the application specifies the nature of information to be furnished, the PIO would not be in a position to accede to the request. He submits that a distinction needs to be maintained, as to the information that can be furnished, on the one hand, and the reasons for existence or non-existence of a particular state of affairs, on the other hand.

11. The petitioner is said to have presented a complaint to the PIO on 23.01.2006. Alleging that the PIO refused to receive the same, the petitioner

approached the first respondent on 23.10.2006. The same was treated as an appeal and notice was issued to the third respondent. The copy of the application, dated 23.01.2006, said to have been made by the petitioner is not made part of record of this writ petition. The first respondent rejected the appeal on 09.01.2007.

12. After dismissal of the appeal on 09.01.2007, the petitioner submitted a fresh application on 18.07.2007 to the third respondent, which reads as under:

"Kindly provide me with all information, including files and notings, regarding action taken on the matters petitioned vide my emails to then Chief Secretary dtd. 25, 26, 29, 31st July 2005, and 3rd August 2005 and CD with supporting evidence presented to the PS to then CS during my meetings".

On receipt of this, the second respondent requested the petitioner to furnish the copies of e-mails. The petitioner felt aggrieved by such communication and he preferred appeal on 15.10.2007. It is in this appeal that he mentioned the details of information dividing them into ten points. The text of the appeal reads as under:

1. "Whether the Government of Andhra Pradesh considers the applicant to be antagonistic, inimical and posing a threat to the Constitution of India, the Government of India and Andhra Pradesh and the general health and well being of Indian society, because of the various allegations he has leveled in his petitions or for any other reason ?

2. Whether the Government of Andhra Pradesh considers the applicant's no excuses, ultra-peaceful, non-disruptive, non-partisan, sathyagraha now in its seventeenth year - against "the patronage paradigm - the paradigm of irresponsibility, shoddiness, cronyism and corruption that is crushing the spirit of our grand nation and making pygmies of us all" and for the idea of the rule of law, to be deserving of appreciation, consideration and exemplary indulgence?

3. Whether the Government of Andhra Pradesh will be pleased to immediately make available to the applicant a copy of rules framed for the implementation of RTI Act 2005 as mandated by the Act, Rules on filing and preservation of information and any other such rules and procedures as the Government considers fit and relevant in the present case ?

4. Whether the Government of Andhra Pradesh is satisfied that it has in this case, obeyed the letter and observed the spirit of the RTI Act 2005 ?

5. Whether the Government of Andhra Pradesh will unambiguously admit Letter (5) along with (7) constitute a clear admission of gross negligence on the part of the former CS and the current administration ?

6. Whether the Government of Andhra Pradesh is satisfied that it does not possess now, nor does it expect to possess in the near foreseeable future, any information regarding the matters mentioned in the applicant's emails and attachments therein, addressed to the former Chief Secretary on dates 25, 26, 29, 31 July 2005 and 3rd August 2005, including copies of letters addressed by

former Chief Minister to various Ministers of Information and Broadcasting, Government of India, which after initial denial you have found in your possession ?

7. Whether the Government of Andhra Pradesh is concerned about such a complete disappearance of vital documents and whether it will immediately and without any further delay identify the officials responsible, and take such disciplinary action as prescribed by the Rules, including the registering of FIRs and simultaneously report the same to the applicant with copies of FIRs ?

8. Whether the Government of Andhra Pradesh will immediately make available to the applicant a list of specimen signatures and initials, along with corresponding names and designations of all officers represented in (7) ?

9. Whether the Government of Andhra Pradesh will immediately take suitable action to correct its internal brief regarding the applicant's case appearing in page 9 of note file since such brief is clearly counterfactual, omits mention of most significant facts, is derogatory, misleading and "uncharitable"?

10. Given the tacit admission of gross negligence at the highest administrative level vide its letters (5) and (7) whether the Government of Andhra Pradesh, in keeping with well established precedents, immediately utilize the information given by the applicant to further the cause of justice and make amends ?"

13. The third respondent issued a reply to this on 02.11.2007. Copy of the

rules framed under the Act was furnished and as regards other items, it was observed that they do not fall within the definition of information. Therefore, it needs to be seen as to whether there was any lapse on the part of the respondents in acceding to the request of the petitioner. To appreciate the contention advanced on behalf of the petitioner, it is necessary to extract Section 6 of the Act.

"Sec.6: Request for obtaining information.-

1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information officer or State Assistant Public Information Officer, as the case may be,

specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

3) Where an application is made to a public authority requesting for an information,--

(i) which is held by another public authority; or

(j) the subject matter of which is more closely connected with the function of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application."

14. An individual, who wants to secure information from a public authority, has to make an application in the prescribed form. The Act is an improvement over the Freedom of Information Act 2002, in that, it ensures that the applicant cannot be required to give the reasons for requesting the information. The same is evident from sub-section (2) of Section 6 of the Act.

15. The word "information" is defined under clause-(f) of Section 2 of the Act, which reads as under:

"Sec.2(f): "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any

electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force".

16. Before undertaking further discussion, as to the legality or otherwise of the orders passed by the respondents, the distinction between 'information' on the one hand and the 'reasons' for existence or non-existence of a particular state of affairs on the other hand, needs to be noticed. The Act has comprehensively defined the word 'information'. It takes in its fold, large variety of sources of information, including documents, e-mails, opinions, press releases, models and data material etc. The common feature of various categories, mentioned in the definition is that they exist in one form or the other and the PIO has only to furnish the same, by way of a copy or description. In contrast, the reason or basis as to why a particular state of affairs exists or does not exist cannot be treated as a source, or item of information.

17. For instance, whether or not, any orders have been passed, on an application for grant of a licence can be sought as an information. In case any order has been passed, the PIO would be under obligation to furnish the copy of the order. On the other hand, if no order was passed on the application, information can be furnished to the same effect. However, he cannot be required to furnish the reasons as to why the licence was granted or not granted. It is only the authorities conferred with the power under the relevant statutes, to take a decision on the application, that can throw light on it. Further, the basis for the decision of such an authority, can be culled out from the order passed by him and he cannot be compelled to state as to why he passed the order

in a particular manner through an application under the Act. It is only by instituting proceedings such as appeal, revision or writ petition that the authority who passed the order can be required to justify it.

18. Obviously, on account of the fact that the whole concept of Right to Information is of recent origin, instances are occurring where the citizens are insisting on furnishing of reasons in relation to a decision taken by one authority are sought from another, by filing application under the Act. Recently, in one application, a citizen asked the Registrar of the Special Court, established under the A.P. Land Grabbing Act, to state as to why the Court has passed an order in a particular way.

19. Reverting to the facts of the case, the petitioner has made reference only to the e-mails in the application. The respondents herein asked the petitioner at least to furnish the copies of e-mails, so that, they can verify whether anything can be done at their level, in the context of furnishing of information. The petitioner firmly refused to accede to that request and insisted that he is not under obligation to reveal the same. In fact, he claimed confidentiality, in relation to the e-mails.

20. During the course of hearing of the appeal before him, the first respondent made frantic efforts to persuade the petitioner to mention the nature of information, which he wants. However, the petitioner stuck to his gun. The following observation made by the petitioner makes this aspect, clear:

"On 04-01-2007, the case came up for hearing again. The appellant and the respondent were present. Once again, the appellant invoked the plea of confidentiality and expressed his inability to provide copies of the E-mails referred to or even share with the Court the broad details made in his representation to the Chief Secretary.

This Commission having carefully gone through the material papers available with it and the request of the appellant is of the considered view that the appellant has not followed the provisions of Section 6(1) (b) of the RTI Act, 2005, which mandates that the request for obtaining information shall "specify" the particulars of the information sought.

As already mentioned above, it is clear that the mandatory provision of Section 6(1)(b) of the RTI Act, 2005, have not been followed and in view of the fact that the appellant is not prepared to take the Court into confidence and provide it with specific particulars of the information sought, thus, under such circumstances, this Commission has no material evidence before it to arrive at a value judgment on the culpability or not of the Government. In view of the foregoing, the appeal is dismissed".

21. In his affidavit filed before this Court, the petitioner branded the efforts made by the respondents to get the particulars as under:

"It is submitted that the State Information Commission / Court utterly disregarded and flouted the provisions of RTI Act 2005 and the decision of the

1st respondent is whimsical and capricious, illegal in the extreme and liable to be set aside.

It is submitted that the State Information Commission fabricated a blatantly specious ruse by claiming falsely that the applicant's petition did not specify the particulars sought.

On the strength of this ruse, and ignoring my repeated protests, it has attempted to intimidate and browbeat me into submitting to its draconian diktat that I divulge copies of my e-mail correspondence with the Chief Secretary.

It has unfairly punished me for protecting my right under the Act (Sec. 6.1 & 6.2) to not be required to give reason for requesting the information or any other personal details except those that may be necessary for purposes of contacting".

22. Even before this Court, the petitioner refused to divulge the nature of information, which he wants, nor did he furnish the copies of e-mails. The curious part of the matter is that, on the one hand, the petitioner stated that his work was highly appreciated by the then Chief Minister, and on the other hand, he complained that he suffered punishment in the hands of the same incumbent. To be specific, the following excerpts are reproduced:

"It is further submitted that the former Chief Minister Sri N. Chandrababu Naidu addressed repeated representations to the Union Minister for Information and Broadcasting to commission me as "a film maker of acknowledged eminence" to

make films to celebrate the 50th anniversary of our Independence. The former CM's representations on my behalf were among the most popular and well supported actions of his tenure. Mysteriously, they were completely ineffective."

At another place, he said,

"My proposal contained three points that would provide me some immediate relief from the public humiliation, grievous professional embarrassment:

- a) The Hon'ble Chief Minister may accept responsibility for the cruel and perverse punishment I had endured at the hands of his predecessor and offer me a sincere and authentic public apology.
- b) The Hon'ble Chief Minister would forward a complete report to the Hon'ble Prime Minister detailing the cruelty I had endured and renewing the request that I be commissioned as a "filmmaker of acknowledged eminence" to produce films to commemorate the 50th anniversary of our Independence.
- c) That the Hon'ble Chief Minister would offer an immediately interim financial relief of Rs. Twenty five lakhs."

23. A comparison of these two paragraphs, discloses that the actual grievance of the petitioner was much more than mere collection of 'information', as defined under the Act.

24. It has already been observed that a distinction needs to be maintained

between information on the one hand and the reasons in support of an administrative action or inaction on the other hand. The effort of the petitioner appears to have been directed mostly in relation to the latter, that too, without specifying the actual grievance, much less, the authority, who was supposed to take a decision. It is well nigh impossible for any one to accede to the request of the petitioner within the scope of the Act and Rules.

25. Of late, a typical tendency is growing, viz to be conscious, more and more about rights, and not the corresponding obligation. If every citizen feels that he is endowed with the right to question, but is not under obligation to answer, a stage may reach where the comparatively small number of persons, who are being questioned, may join the team of those who choose, just to question. If that happens, the society may face a situation, where it would become difficult to expect answers.

26. The Act is an effective device; which, if utilized judiciously and properly, would help the citizens to become more informed. It no doubt relieves an applicant from the obligation to disclose the reason as to why he wants the information. However, indiscriminate efforts to secure information just for the sake of it, and without there being any useful purpose to serve, would only put enormous pressure on the limited human resources, that are available. Diversion of such resources, for this task would obviously, be, at the cost of ordinary functioning. Beyond a point, it may even become harassment, for the concerned agencies. Much needs to be done in this direction to impart a sense of responsibility on those, who want to derive benefit under the Act; to be more

practical and realistic.

27. This Court does not find any legal or factual infirmity in the orders passed by the respondents and the writ petition is accordingly dismissed.

There shall be no order as to costs.

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